

**EMPLOYEE STATUS DETERMINATION**

S.S.A. XXX-XX-0559      CH  
S.S.A. XXX-XX-0913      DR  
R.R.B. A-XXX-XX-0897      GS

This is the decision of the Railroad Retirement Board regarding the status of C H, DR, and GS as employees of a covered railroad employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (RRA and RUIA). Previously, the Board in Board Coverage Decision 06-26 determined on reconsideration that these three individuals were covered employees under the Acts beginning January 1995. In a decision rendered September 24, 2007, the United States Court of Appeals for the Seventh Circuit vacated the Board's decision and remanded the appeal to the Board. Weyerhaeuser Co. v. U.S. Railroad Retirement Board, 503 F. 3d 596 (7<sup>th</sup> Cir., 2007). For the reasons discussed below, the Board now dismisses the appeal as moot.

CH claims service as an employee of the DeQueen & Eastern Railroad Company (DQ&E RR) from 1978 to sometime in 1982 based on accounting work split between the DQ&E RR and its corporate parent Weyerhaeuser Company. CH also claims service as an employee of the DQ&E RR from 1982 to 2002 as Manager of Railroad Accounting. CH left railroad service in 2003 and was awarded a widow's annuity under the RRA beginning April 1, 2003. In B.C.D. 06-26, the Board denied CH's claim for service from 1978 through 1994 on grounds that the lack of reported railroad service for these years was conclusive under section 9 of the RRA. The Board granted her claim for service beginning January 1995.

DR claims service as an employee of the DQ&E RR based on work as a wood products accounting clerk for 1978 and 1979; as a central stores purchasing assistant from 1980 through 1983; as a central stores purchasing administrator from 1983 through 1986; as central stores purchasing manager from 1986 through 1997; and in 1997 as purchasing and maintenance planning. In B.C.D. 06-26, the Board denied DR's claim for service from 1978 through 1994 on grounds that the lack of reported railroad service for these years was conclusive under section 9 of the RRA. The Board granted her claim for service beginning January 1995.

GS claims service as an employee of the DQ&E RR based on work as a railcar repairman from January 1972 to sometime in 1982; as a locomotive repairman from

sometime in 1982 to August 1996; and as manager of the DQ&E RR repair shop from August 1996. In B.C.D. 06-26, the Board denied GS's claim for service from 1972 through 1994 on grounds that the lack of reported railroad service for these years was conclusive under section 9 of the RRA. The Board granted his claim for service beginning January 1995. GS left railroad service in 2007 and has been awarded an annuity under the RRA beginning August 1, 2007.

Weyerhaeuser filed a petition to review B.C.D. 06-26 in the United States Court of Appeals for the Seventh Circuit. Weyerhaeuser did not challenge the Board's determination that CH, DR and GS were employees of DQ&E RR under the RRA and RUIA after year 2000, but objected to the Board's determination that returns of service were due for years prior to 2001.<sup>1</sup> CH, DR, and GS in turn petitioned the Court of Appeals to review the Board's decision to deny their claimed service prior to 1995.

In Weyerhaeuser v. U.S. Railroad Retirement Board, the Court of Appeals on September 24, 2007, affirmed the decision of the Board in B.C.D. 06-26 to deny service and compensation credit to CH, DR, and GS prior to 1995.<sup>2</sup> The Court remanded the claims of these three individuals to the Board for a new decision regarding the period January 1995 through 2000. On April 22, 2008, in Board Order

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<sup>1</sup> RRA section 9 prevents an employee from claiming service and compensation more than four years after the return of compensation for the claimed calendar year was required to be filed. The record shows that Ms. Honea, Ms. Ruth, and Mr. Sharp first notified the Board they claimed service to the DQ&E RR during the period March 2003 through February 2004. The return for service in 1999, which was filed in February 2000, thus became final in February 2003. During the period Ms. Honea, Ms. Ruth, and Mr. Sharp made their claims, the four years which remained open under section 9 were 2000 through 2003, not 2001 through 2004 as assumed by Weyerhaeuser. (Pet. Br. @ note 4) This misunderstanding does not affect the resolution *infra* of the claims for service in this decision.

<sup>2</sup> The Court of Appeals also affirmed the Board's decision in B.C.D. 06-26 to deny railroad service credit to Ben Bramlett for 1973 through 1984, and to Karen Neumeier for 1975 through 1984. In addition, the Court reversed the Board's decision in B.C.D. 06-26 to reopen B.C.D. 05-21, which had on reconsideration denied railroad service claimed by Larry Potts prior to 1999. The Court of Appeals decision did not remand these claims to the Board for further consideration, and accordingly they are not part of the matter presently before the Board.

No. 08-36, the Members of the Board unanimously directed the Board's Chief of Compensation and Employer Services to enter into the Board's records as railroad compensation the amount of earnings previously reported for these three individuals by Weyerhaeuser Company to the Social Security Administration. While the Board's order to the Chief of Compensation and Employer Services required that he coordinate these account entries with SSA, the order did not require any returns of compensation be filed for these years by DQ&E RR. The Board also directed that no contributions for these years were to be assessed against the employer under section 8 of the RUIA.

A case which cannot affect the rights of the parties concerned lacks a case or controversy, and is moot. DeFunis v. Odegaard, 416 U.S. (1974)(student previously denied admission was later admitted and in last semester prior to graduation when case was decided). Both Weyerhaeuser and the employees agree that railroad service should be credited beginning 2001. The Court of Appeals, by affirming the Board's determination in B.C.D. 06-26 to deny service credit prior to 1995, has decided the rights of the parties with respect to years prior to 1995. The records of the Board regarding CH, DR and GS now reflect railroad service credit and compensation for 1995 through 2000 based on Board Order 08-36, in the same manner as if the Board had ordered DQ&E RR to file returns of compensation to the Board under RRA section 9. A decision by the Board on the question of the status of these individuals as employees from 1995 through 2000 will not increase their current or potential benefits under the Acts. Accordingly, the Board dismisses the employees' appeal as moot.

As noted above, DQ&E RR has previously agreed to file returns under the Acts for years after 2000 for these individuals. The inter-agency account adjustment between SSA and RRB which the Chief of Compensation and Employer Services has made pursuant to Board Order 08-36 will not require DQ& E RR to file any return with the Board for the years 1995 through 2000. Moreover, pursuant to B.O. 08-36 the Board will not assess any contributions with respect to this compensation under section 8 of the RUIA. A decision now by the Board on the claims of CH, DR and GS for service as employees from 1995 through 2000 will therefore not impose any burden on DQ&E RR under the Acts to file any return or report of compensation with the Board for these years, or require DQ&E RR to make any payment to the Board for these years under the RUIA. Because the rights of Weyerhaeuser Company and DQ& E RR under the Acts administered by the Board will not be affected by a decision by the Board on the status of these individuals as employees under the Acts, the Board also dismisses the appeal of Weyerhaeuser Company as moot.

The appeal on remand from the Court of Appeals is dismissed.

Original signed by:

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Jerome F. Kever